

**CITY OF SOMERVILLE  
NOTICE OF A SPECIAL CALLED MEETING AND PUBLIC HEARING**

**December 18, 2018  
6:15 PM**

**SOMERVILLE SENIOR CITIZENS CENTER  
17510 SH 36 SOUTH, SOMERVILLE, TEXAS**

**1. CALL TO ORDER**

**2. INVOCATION**

**3. PLEDGE OF ALLEGIANCE.**

**4. CITIZEN'S COMMENTS (5 Minutes)**

To comply with Ordinance No. 05-007A, Rules of Conduct at Council Meetings, Section 2 and Section 3(a). Citizens signing up to speak at the beginning of council meetings under the item "Citizens Comments" shall, upon being recognized by the Mayor, have five (5) minutes to address the City Council. No citizen shall have more than five (5) minutes unless approved by majority vote of the Council. Citizens may also provide any additional comments or information in writing to the Council before, during or after the City Council Meeting.

Once the period of public statements and comments on an agenda item has concluded and council discussion begins, citizens shall not interrupt the discussion and deliberation of business by the Council; and each person who addresses the Council shall do so in an orderly manner and shall not make personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public such as to disrupt the meeting.

**5. PRESENTATIONS**

A. N/A

**6. REPORTS**

A. N/A

**7. CONSENT AGENDA**

All Items on the Consent Agenda are to be considered self-explanatory in nature and may be enacted with one motion, on second and one vote and without separate discussion of each item. However, Council reserves the right to move any item or all items from the Consent Agenda to New Business for discussion and separate action.

A. N/A

**8. PUBLIC HEARING**

**The Mayor shall close the open meeting at this time and open the Public Hearing for the purpose of A Specific Use Permit for 613 Box Car Road.**

**The Mayor shall close the Public Hearing at this time and reconvene to regular session.**

**9. UNFINISHED BUSINESS**

A. N/A

**10. NEW BUSINESS**

**Action Item(s)**

- A. Discuss, consider and approve (disapprove) or conditionally approve the request for a Specific Use Permit at 613 Box Car Road for the placement of a 2013 HUD Code Manufactured Home for use as an owner occupied residential structure for the applicant and his family.
- B. Approve the discontinuance of the collection of a \$5.00 Street Repair Maintenance Fee attached to customer utility bills and to credit prior payments made to each respective account and to authorize the City Attorney to prepare an Ordinance for the next regular City Council meeting, repealing and rescinding Ordinance Number 18-006, Dated October 1, 2018, that originally created the \$5.00 Street Fund Fee.
- C. Discuss, consider and approve (disapprove) Ordinance No. 18-012 amending Ordinance No. 05-007-A providing rules for citizen communication during City Council Meetings; Providing rules for placing items on the agenda and appeal

thereof; Amending and repealing all conflicting Ordinances; and Providing for other related matters.

**11. The City Council will convene in executive session pursuant to (Texas Open Meetings Act), Chapter 551 of the Texas Government Code, Section 551.074 Personnel Matters, which allows the following:**

- A. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
- B. To hear a complaint or charge against an officer or employee

**ITEMS OF EXECUTIVE SESSION DELIBERATION**

- (1) Deliberate and discuss the possible appointment of Ismael "Danny" Segundo to the position of City Administrator for the City of Somerville.

**12. RECONVENE**

**The City Council will return to open session in the City Council Chamber for possible deliberation and action as a result of the Executive Session (IF ANY).**

- (1) Consider taking action or no action related to the appointment of Ismael "Danny" Segundo to the position of City Administrator for the City of Somerville.

**13. ADJOURN**

Date Posted: **12/14/18**

Time: **1:00 pm**

Certified By: **Rose Rosser**

**NEW BUSINESS**

**ITEM # A**



**Memo To:** Honorable Mayor and City Council Members

**From:** Kathy Pollock, Code Enforcement Officer/ Assistant to the City Administrator

**Date:** December 12, 2018

**Subject:** Specific Use Permit for 613 Box Car Road

**Background/Procedure:**

Specific Use Permits (SUPs) may be requested by a property owner who seeks to place a HUD-Code (manufactured) Home outside of the areas designated in Ordinance 13-003 (see Attachment 1). Because of the possibility that certain uses may adversely impact neighboring properties, City Council reviews and evaluates such requests and may grant, deny, or conditionally approve Specific Use Permits.

In order to request an SUP, the owner must submit an application and all required information to the City, along with a non-refundable fee of \$200.00 no less than 21 days prior to the proposed hearing date (regular or called city council meeting).

A public hearing is required to be held by City Council prior to the issuance of a Specific Use Permit. Written notice of the requested action and the public hearing shall be sent by U.S. Mail to the last known owner or occupant of each property within 200 feet of the tract of land for which the SUP is requested, and notice of the hearing is required to be published in the official newspaper.

The purpose of the public hearing is to provide an opportunity for citizens to express concerns about, support for, or opposition to the proposed SUP.

After the public hearing closes, staff will introduce the property owner, who will have about 5 minutes to address the council about their request. Staff will answer any questions council has regarding the case before taking action.

**Action Requested:** Consider, discuss, and approve, disapprove, or conditionally approve the request for a Specific Use Permit at 613 Box Car Road for the placement of a 2013 HUD Code Manufactured Home for use as an owner occupied residential structure for the applicant and his family.

**Case Information/Details:**

The property consists of two lots in the WA & JRL #2 Addition, a platted but undeveloped subdivision of the City of Somerville (Attachment 2). Water and sewer are available, and lines are located within 200 feet of the subject property. There are no paved roads or drainage infrastructure in this subdivision and the applicant is aware of the fact that the city has no current plans to enhance the undeveloped streets in the near future. The lots are located in Zone X (Area of Minimal Flood Hazard) on the National Flood Hazard Maps (see Attachment 7).

The property has been sold twice in the past 6 months, and the appraisal district has just updated the property information files (Attachment 6) to reflect the first sale (Somerville Investments, LLC to D. Ureste, 5/29/18). The deeds for the sale of the property by Mr. Ureste to the applicants were filed in the real property records of Burleson County on October 19, 2018, although this transfer has not yet been picked up by BCAD.

The owners submitted the application (Attachment 3) timely. Requirements for a complete submittal included a site plan (Attachment 4), a list of property owners within 200 feet of the subject property (Attachment 8), the \$200.00 fee, and the owners also submitted photographs of the HUD-Code Manufactured Home the Jacksons propose to install (Attachment 5).

The requirements for the installation of the HUD Code Home are set out in the Manufactured Home Ordinance and include setbacks from the property lines, skirting, and proper installation on the site, provisions for parking, and that the home be no more than five years old at the time of installation. The Jacksons have met with City staff to obtain applications for a building permit and utility service from the city. They have been provided contact information for electrical service from Entergy.

**Staff Findings:**

Staff finds that there are no irregularities in the application, and that there is does not appear to be any reason for a statutory denial of the SUP.

**Required Findings for City Council Approval:**

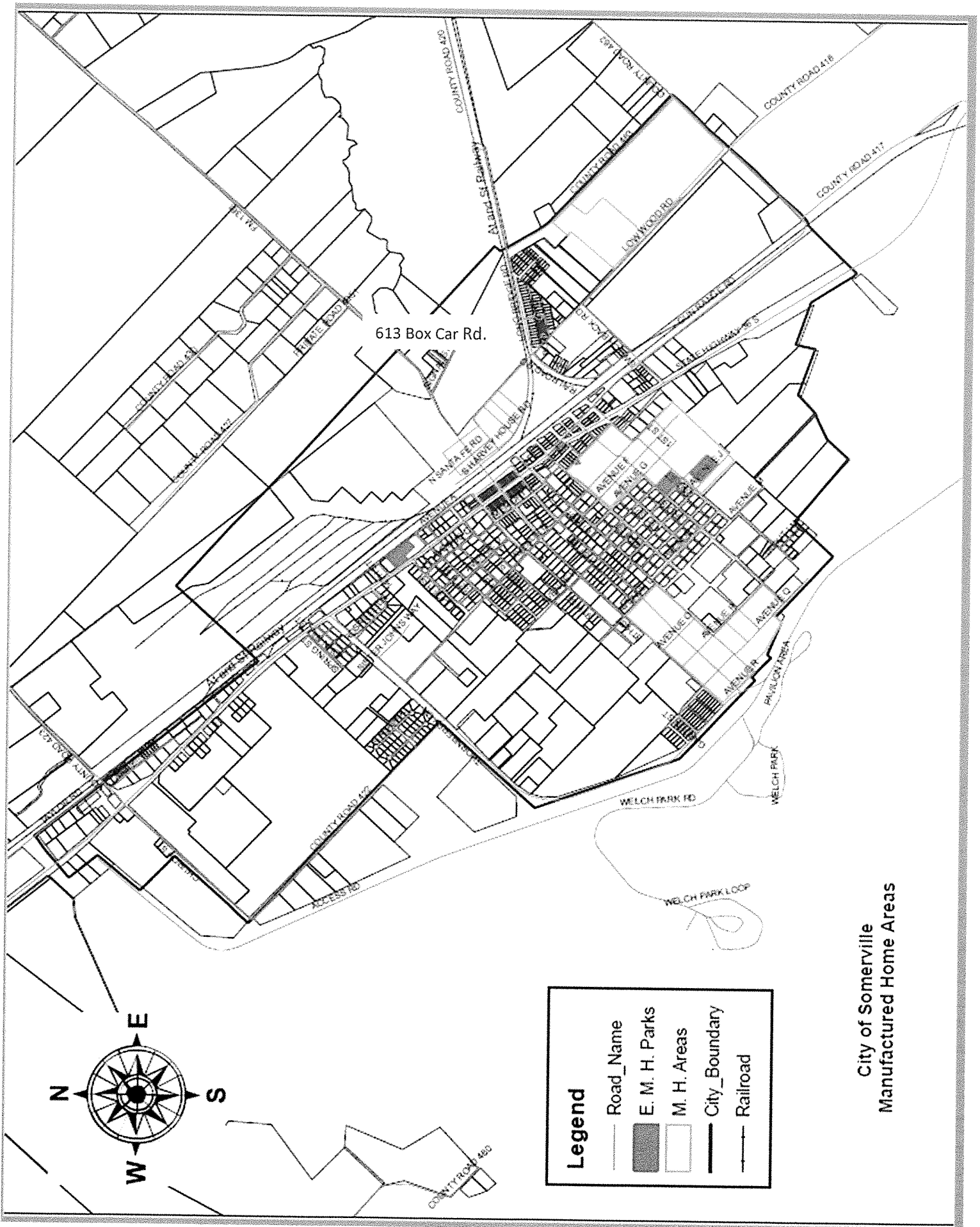
A Specific Use Permit shall be authorized only if all of the following conditions are met:

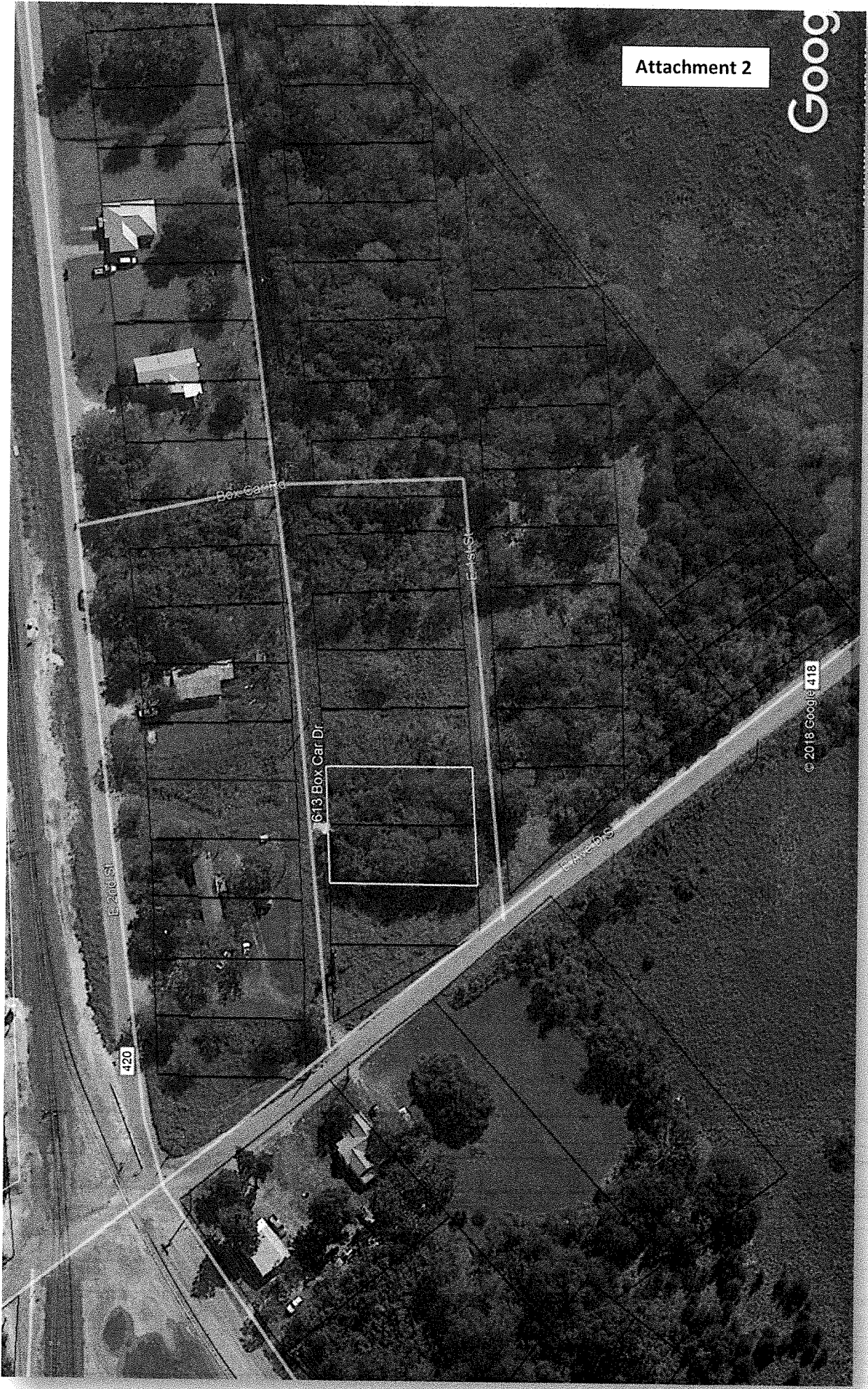
1. The specific use permit will be compatible with, and not injurious to, the use and enjoyment of the property, or neighboring properties, nor materially diminish or impair property values within the immediate vicinity;
2. The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;
3. Adequate utilities, access roads, drainage, parking and driveways and other necessary support facilities have been or will be provided;
4. The applicant shall establish that the use and occupancy will comply with all applicable terms of this ordinance; and
5. The City Council finds that it is not in conflict with the public interest to grant such permit.

Please review the last page of the application for the applicant's answers to these concerns.

**Attachments:**

1. Manufactured home Zone Map with subject property marked.
2. Area Map showing subject and adjacent property
3. Application
4. Site Plan
5. Photos of Manufactured Home
6. BCAD property sheet
7. National Flood Hazard Layer FIRMette
8. List of Property Owners Notified of SUP Request







# City of Somerville

## Application for Specific Use Permit

### Minimum Submittal requirements:

- ☒ \$200.00 application fee
- ☒ Completed and signed application form
- ☒ Site Plan (10 copies)
- ☒ Notification List of property owners/tenants within 200 feet of property line of affected property (Dorchester County Appraisal District, 111 East Fawn Street, Caldwell, 879-587-2318)
- ☐ Inspection report (highly recommended, but not required)
- ☐ Completed building permit application, if applicable

### Property Owner Information:

Name Christopher + Bridgett Jackson  
 Mailing Address 12711 FM 1371  
 City Chappell Hill State Tx Zip Code 77426  
 Phone Number (979) 271-0214 Fax Number \_\_\_\_\_  
 E-Mail Address bridgett.nickerson@yahoo.com

### Applicant Information:

Same as above ☒  
 Name Christopher + Bridgett Jackson  
 Mailing Address 12711 FM 1371  
 City Chappell Hill State Tx Zip Code 77426  
 Phone Number (979) 271-0214 Fax Number \_\_\_\_\_  
 E-Mail Address bridgett.nickerson@yahoo.com  
 If not the same as above, please explain: \_\_\_\_\_

### Agent or engineer Information:

Name/Title \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_  
 E-Mail Address \_\_\_\_\_

### Property Information:

Address: 6915 box car Rd Somerville TX 77079  
 R - Number 0722104 Legal description Wm + 381 # 2 Block 1, Lot 93  
 & Lot 4 (attach page if necessary)  
 Lot size or acreage 0.2704  
 Current use: Vacant Proposed use: Live / Home  
 In Manufactured home Zones 1-4: No Outside Zone: YES  
 Is any of the property located in the floodplain? YES \_\_\_\_\_ NO \_\_\_\_\_  
 Is this property under a Specific Use Permit? No  
 Legal Non-Conforming Use? No Age of HUD Code home: 2013  
 Record Owner(s) Christopher + Bridgett Jackson

NOTE: If the record owner(s) are not the applicant(s), a notarized affidavit from the record owner(s) authorizing the applicant to request a Conditional use Permit and/or represent the record owner(s) must accompany this application.

City Council, City administrator and/or staff reserve the right to require the submittal of additional information it deems appropriate and necessary for the effective review of this application

### *Certifications & signatures:*

Please Note: the signature of the Owner authorizes the City of Somerville, its contractors, agents or staff to visit and inspect the property for which this application is being submitted. The signature of the owner, applicant and/or agent also signifies that all parties have reviewed the requirements of this procedure and that all items on the checklist have been complied with. All correspondence and communication will be conducted through a single point of contact, which may be the owner, the applicant or an agent designated by the owner.

Contact for this project: Christopher & Bridgett Jackson

At a minimum the designated contact person for this project MUST be present at all public hearings/meetings concerning this application, for it to be considered. Absence from such hearings may result in denial of this application.

The Undersigned hereby certify that this application contains no willful falsification or misrepresentation, and that the information contained herein is complete, correct and true to the best of my knowledge and belief. Furthermore we understand that should investigation at any time disclose such misrepresentation or falsification, all changes and/or amendments granted by consideration of this application may be forfeited.

Owner: Christopher & Bridgett Jackson  
I.D. \_\_\_\_\_

Applicant (if different): \_\_\_\_\_  
I.D. \_\_\_\_\_

Agent: \_\_\_\_\_  
I.D. \_\_\_\_\_

### *Staff use only!*

All required items filed, submitted or paid: November 16, 2018 KP

Mailing Date for notifications: 12/2/18 Actual Date: 12/1/18

Publication date: 12/1/18 Actual Date: 12/5/18

Date of City council Meeting/Public Hearing: December 18, 2018

# City of Somerville

## SPECIFIC USE PERMIT HEARING RESULTS

CASE NUMBER:

HEARING DATE:

APPLICANT: OWNER \_\_\_ OTHER \_\_\_ NAME:

ADDRESS:

IDENTIFICATION OF HUD CODE HOME:

### RESOLUTION

APPROVED \_\_\_

DENIED \_\_\_

CONDITIONALLY APPROVED \_\_\_

CONDITIONS OF APPROVAL:

WITNESSED BY \_\_\_\_\_

THIS DOCUMENT SHALL BE KEPT ON FILE IN THE CODE ENFORCEMENT DEPARTMENT OFFICE AND NOTED ON THE RECORD MAP OF THE MANUFACTURED HOME ORDINANCE. THE APPLICANT MAY FILE A COPY OF THIS DOCUMENT WITH THE COUNTY CLERK AT HIS OPTION AND EXPENSE.

The following page should be completed for all specific use permit requests by the owner or the applicant, and will be considered during the review process. If you have questions regarding the completion of this page, please contact the code enforcement staff for assistance.

Please describe the reason for requesting a specific use permit for this property:

The ~~reason for requesting~~ <sup>reason for requesting</sup> a S.U.P. building permit, so that I can place a ~~new~~ Home on WA & JRL # 2 Block 1, Lot 3+4 property. Manufactured

Describe how the approval of this SUP will be compatible with and not injurious to the use and enjoyment of this or neighboring properties, not impair property values in the vicinity:

The approval of this S.U.P. will be compatible with and not injurious to the use AND enjoyment of this neighboring properties and not impair property value in the vicinity by me making sure that I follow all / manufactured Home regulations and make sure that occupancy and maintenance shall be applicable.

Provide evidence that the establishment of this use will not impede normal development of adjacent properties:

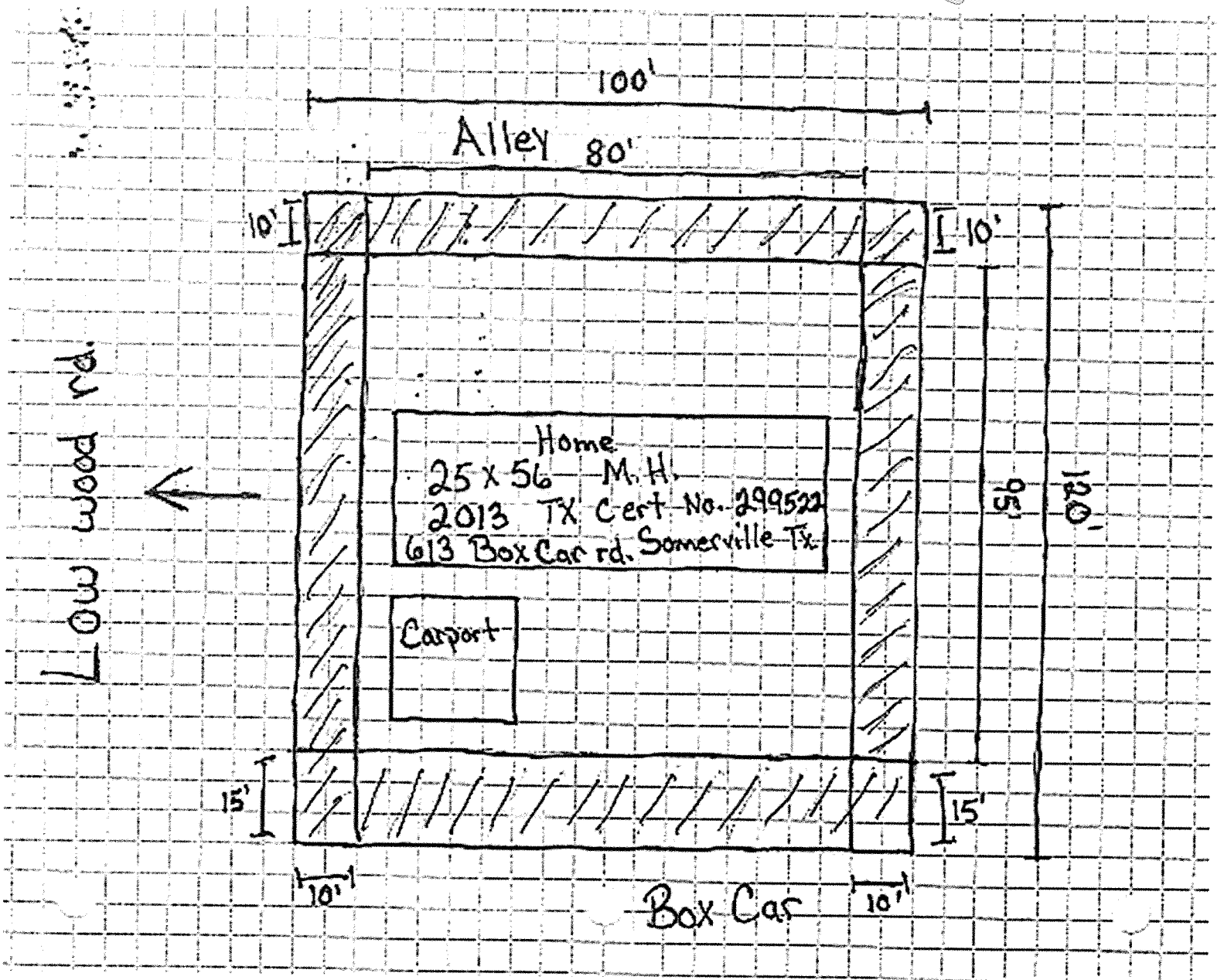
There nothing else in the area.

Provide evidence that adequate utilities, drainage, road, or other necessary support facilities have been or will be provided:

We already fill out utilities and energy application and will follow through on everything.

Provide evidence that all other code or regulatory requirements for the specific use have been or will be met (driveways, parking, age of HUD home, setbacks, etc.)

We will goby code of parking, cleaning area, setbacks 2<sup>nd</sup> mortgage corp. will set up everything by code.





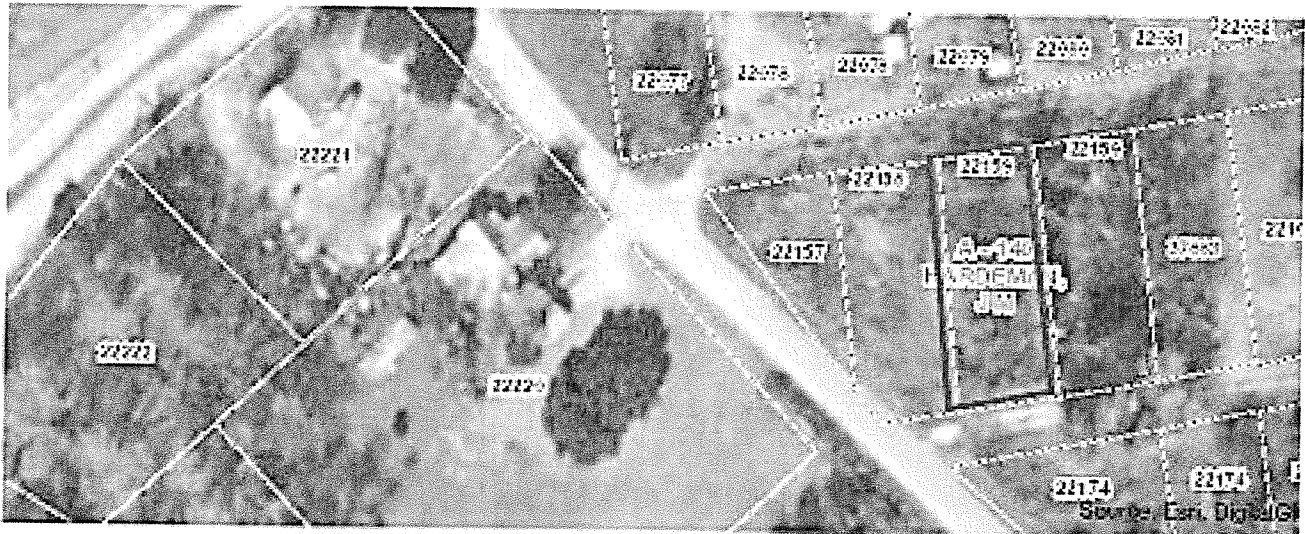




## Burleson CAD Property Search

**Property ID: 22159 For Year 2018**

 Map



### Property Details

## Account

Property ID: 22159

**Legal Description:** VIA & JRL # 2BLOCK 1, LOT 4

Geographic ID: 2433-000-001-00300

**Agent Code:**

Type: Real

### Location

**Address:** BOX CAR RD SOMERVILLE, TX 77879

**Map ID:**

**Neighborhood CD:**

**Owner**

Owner ID: 26228

Name: URESTE DANIEL

**Mailing Address:** PO BOX 1222  
SOMERVILLE, TX 77879

**% Ownership:** 100.0%

**Exemptions:** For privacy reasons not all exemptions are shown online.



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## Property Values

Improvement Homesite Value:	\$0
Improvement Non-Homesite Value:	\$0
Land Homesite Value:	\$0
Land Non-Homesite Value:	\$900
Agricultural Market Valuation:	\$0
Market Value:	\$900
Ag Use Value:	\$0
Appraised Value:	\$900
Homestead Cap Loss: 0	\$0
Assessed Value:	\$900

**DISCLAIMER** Information provided for research purposes only. Legal descriptions and acreage amounts are for appraisal district use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

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## Property Taxing Jurisdiction

Entity	Description	Tax Rate	Market Value	Taxable Value
CAD	Burleson CAD	0.000000	\$900	\$900
CSM	Somerville City	0.650610	\$900	\$900
GBU	Burleson County	0.485000	\$900	\$900
HOS	Memorial Hosp	0.091960	\$900	\$900
RDD	County Road	0.075000	\$900	\$900
SSM	Somerville ISD	1.340000	\$900	\$900
Total Tax Rate: 2.642570				

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## Property Improvement - Building

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## ■ Property Land

Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
S2433	S2433	0.1377	6,000.00	50.00	120.00	\$900	\$0

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## ■ Property Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap Loss	Assessed
2019	N/A	N/A	N/A	N/A	N/A	N/A
2018	\$0	\$900	\$0	\$900	\$0	\$900
2017	\$0	\$1,800	\$0	\$1,800	\$0	\$1,800
2016	\$0	\$1,320	\$0	\$1,320	\$0	\$1,320
2015	\$0	\$1,320	\$0	\$1,320	\$0	\$1,320
2014	\$0	\$1,320	\$0	\$1,320	\$0	\$1,320
2013	\$0	\$1,320	\$0	\$1,320	\$0	\$1,320
2012	\$0	\$1,320	\$0	\$1,320	\$0	\$1,320
2011	\$0	\$1,320	\$0	\$1,320	\$0	\$1,320

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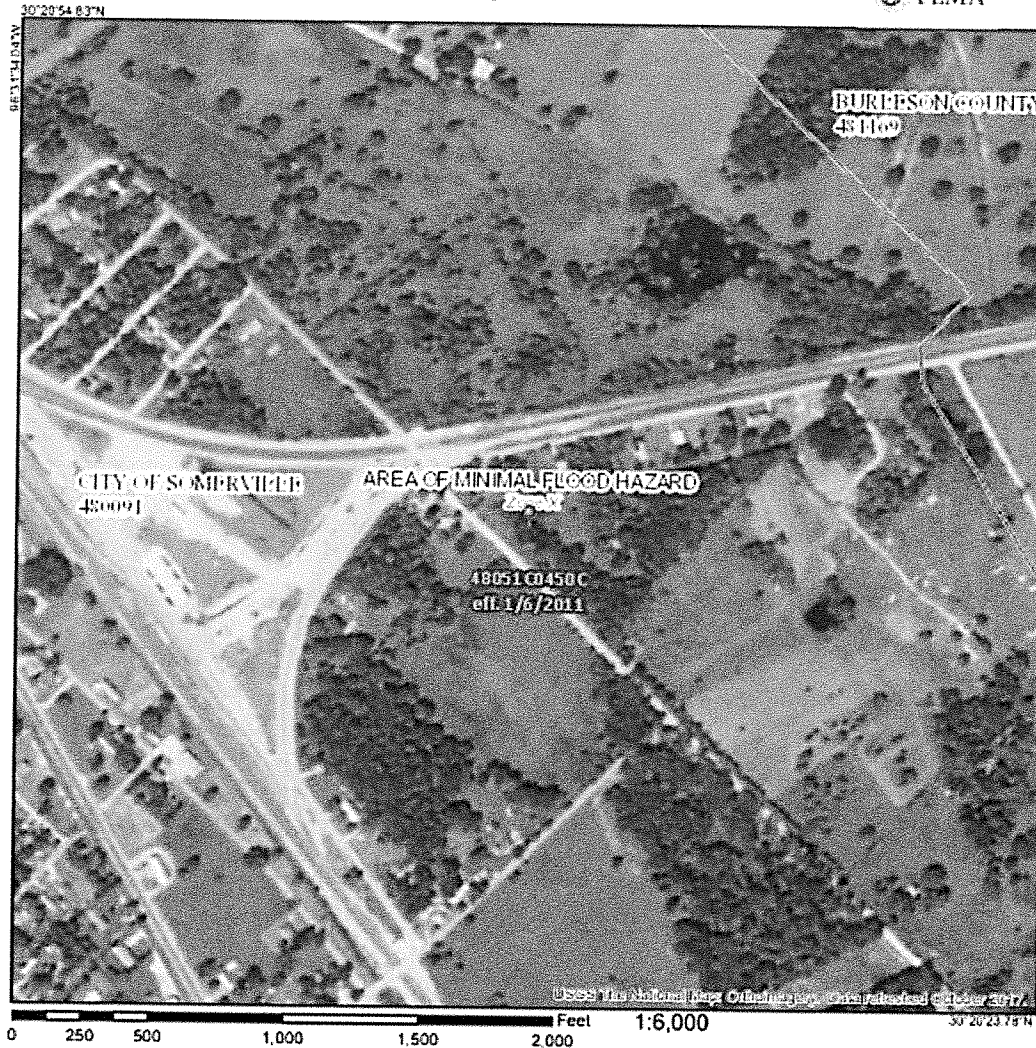
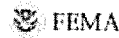
## ■ Property Deed History

Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Number
5/29/2018	DEED	DEED	SOMERVILLE INVESTMENTS LLC	URESTE DANIEL	1150	499	4509
3/16/1999	TD	TRUSTEES DEED	SOMERVILLE INVESTMENTS LLC		499	800	

## DISCLAIMER

**DISCLAIMER** Information provided for research purposes only. Legal descriptions and acreage amounts are for appraisal district use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

## National Flood Hazard Layer FIRMette



## Legend

SEE FIRM REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS	Without Base Flood Elevation (BFE) Zone A, V, X50
	With BFE or Depth Zone AE, AO, AH, VE, AR Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD	0.2% Annual Chance Flood Hazard: Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone 1
	Future Conditions 1% Annual Chance Flood Hazard Zone A
	Area with Reduced Flood Risk due to Levee. See Notes. Zone 1
	Area with Flood Risk due to Levee Zone D
OTHER AREAS	Area of Minimal Flood Hazard Zone 1
	Effective LDMRs
GENERAL STRUCTURES	Area of Undetermined Flood Hazard Zone 2
	Channel, Culvert, or Storm Sewer Levee, Dike, or Floodwall
OTHER FEATURES	Cross Sections with 1% Annual Chance Water Surface Elevation Coastal Transect Base Flood Elevation Line (BFE) Limit of Study Jurisdiction Boundary Coastal Transect Baseline Profile Baseline Hydrographic Feature
	Digital Data Available
	No Digital Data Available
	Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 12-13-2018 at 12:27:19 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

## Attachment 8

SUP - Jackson									
Property Owners within 200 feet of property lines									
BCAD									
RH	No.	Street	Owner, Last	First	Owner Address	Tenant, Last	First	Tenant Address	Vacant Lot
22220	460	CR 418*	Brinston	Olivet	P.O. Box 1224 Somerville TX 77879	Walker	Joseph	P.O. Box 2125, Bryan TX 77886	
22077		Long Bridge	Jones	Rhonda Reynolds	23619 Kingston Ridge Way, Katy TX 77493				X
22078	634	Long Bridge	Green	Thomas & Delores	634 Long Bridge Road Somerville TX 77879				
22079	650	Long Bridge	Hagans	Sharon	P.O. Box 834, Somerville TX 77879				
22060		Long Bridge	Brooks	Curtis *	c/o Michelle Ratliff P.O. Box 1174, Somerville, TX 77879- 1174				X
22081		Long Bridge	Ellis	Darryl B.	1019 6th Street, Somerville, TX 77879- 3559				X
22082	680	Long Bridge	Ellis	Darryl B.	1019 6th Street, Somerville, TX 77879- 3559	Thomas	Drew M.	680 Long Bridge Rd, Somerville TX 77879	
22083		Long Bridge	Wellmann	Anthony	c/o Harvey Wellmann 7629 Bau Road, Brenham TX 77833-0518				DB
22084		Long Bridge	Wiley	Mary	11005 Scott Street, Houston TX 77047				X
22162		Box Car Rd.	Wiley	Mary	11005 Scott Street, Houston TX 77047				X
22161		Box Car Rd.	Burton	Willie	3805 W. 8th Street, Bryan TX 77803				X
22160		Box Car Rd.	Green	Doris J	109 Hardy Street, Bryan, TX 77801-1258				X
37883		Box Car Rd.	Green	Doris J	109 Hardy Street, Bryan, TX 77801-1258				X
22158		Box Car Rd.	Jones	Rhonda Reynolds	23619 Kingston Ridge Way, Katy TX 77493				X
22157		Low Wood Rd.	Overall Lumber & Hardware Inc		P.O. Box 310, Somerville, TX 77879-0310				X
22174		Low Wood Rd.	Jones	Rhonda Reynolds	23619 Kingston Ridge Way, Katy TX 77493				X
22173		Box Car Rd.	Burton	Willie	3805 W. 8th Street, Bryan TX 77803				X
22172		Box Car Rd.	Reyes	Olga Lidia Trejo	309 W. 30th, Bryan TX 77803				X

22171	660	Low Wood Rd. *	Coleman	Odessa*	P.O. Box 1076, Samerville, TX 77879				DB
22176		Low Wood Rd.	Neyes	Olga Lidia Trejo	309 W. 30th, BryanTX 77803				X
22159	613	Box Car Rd.	Jackson	Christopher*	12711 FM 1371, Chappell Hill, TX 77426				

**NEW BUSINESS**

**ITEM # B**

# AGENDA MEMORANDUM

**MEMO TO:**

Honorable Mayor and City Council Members

**FROM:**

Kerry Lacy, City Manager/Administrator

**DATE:**

December 14, 2018

**SUBJECT:**

Street Fund Fee of \$5.00 per Utility Account

**INFORMATION:**

Since arriving in Somerville, I have had concerns over the legality of the City charging a \$5.00 fee for street repairs and maintenance attached to the utility bill sent to customers. Home Rule municipal governments have the authority to enact such a fee as they are self-governed. However, a General Law municipality is governed by State law and State law grants all the powers that a General Law city operates under. During my investigation as to the legality of such a fee and finding no such authority existed for a General law city to enact such a fee, I determined that it would be in the best interest of the City and the citizens to acquire a legal opinion from the City Attorney and from the Texas Municipal League Legal Department.

Both responses that I received confirm that the City of Somerville may not charge a mandatory \$5.00 Street Repair and Maintenance Fee attached to the utility bill. Based upon the legal opinions I have received, I am authorizing City staff to immediately discontinue the billing and collection of the \$5.00 Fee and to credit each utility account, that paid the fee, the total amount paid into the Street Fund thereby reducing the upcoming billing for service by that amount.

It is my recommendation, that in the future, Council have all Ordinances and Resolutions either prepared by or approved by the City Attorney prior, to adoption, to assure that the actions you take are permissible and have solid legal standing.

**ACTIONS REQUIRED:**

Approve the discontinuance of the collection of a \$5.00 Street Repair and Maintenance Fee attached to customer utility bills and to credit prior payments made to each respective account and to authorize the City Attorney to prepare an Ordinance for the next regular City Council meeting, repealing and rescinding Ordinance Number 18-006, dated October 1, 2018, that originally created the \$5.00 Street Fund Fee.

**ATTACHMENTS:**

- 1) Texas Municipal League Legal Department Opinion
- 2) City Attorney Opinion



## ATTACHMENT 1

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**Fwd: Street Fee**

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**From :** csecretary <csecretarycos@somervilletx.gov> Mon, Dec 10, 2018 11:30 AM  
**Subject :** Fwd: Street Fee 2 attachments  
**To :** Manager <managercos@somervilletx.gov>

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**From:** "Christy Drake-Adams" <christy@tml.org>  
**To:** "csecretarycos@somervilletx.gov" <csecretarycos@somervilletx.gov>  
**Sent:** Monday, December 10, 2018 11:27:27 AM  
**Subject:** Street Fee

Rose:

Thanks for your call. As we discussed, there are several attorney general opinions that are relevant to the question of whether a general law city may include a "street fee" on its utility bills. See, e.g., Tex. Att'y Gen. Op. Nos. JM-338 (1985), GA-0084 (2003). The bottom line is that those opinions (attached) indicate that a general law city may not attach a mandatory fee on a bill for unrelated services.

I hope this information is helpful. Please consult your local legal counsel in making a final decision about this matter.

Sincerely,  
Christy Drake-Adams  
Assistant General Counsel  
Texas Municipal League  
1821 Rutherford Lane, Suite 400  
Austin, Texas 78754  
(512) 231-7400  
(512) 231-7490 (fax)  
[christy@tml.org](mailto:christy@tml.org)  
[www.tml.org](http://www.tml.org)

***Empowering Texas cities to serve their citizens.***


Please be advised that the information in this e-mail is provided for informational purposes only. Neither this communication, nor any other communication with the Texas Municipal League (TML), creates an attorney-client relationship between the TML legal department or its attorneys and you or your city or any third party. Once received by a city official, this communication may be subject to public release.


Every city official and employee should consult with local legal counsel to ensure that any information or documents comply with current law and the particular facts of each situation.

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City Secretary  
City of Somerville  
PO Box 159  
Somerville, Texas 77879  
Phone (979) 596-1122  
FAX (99) 596-1931

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 **jm0338\_gi fee.pdf**  
80 KB

 **ga0084 (1).pdf**  
2 MB

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## The Attorney General of Texas

JIM MATTOX  
Attorney General

August 14, 1985

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

Honorable Charles F. Aycock  
Parmer County Attorney  
P. O. Box 286  
Farwell, Texas 79525

Opinion No. JM-338

Re: Whether the city of Bovina may charge home owners and business owners a flat fee for maintenance of a police department

Dear Mr. Aycock:

You ask whether the city of Bovina, a city incorporated under the general laws, may assess a \$6 charge against all home owners and business owners in Bovina. The charge would appear on monthly utility bills, and the proceeds would be used to finance the city's police department. You also ask whether the city could discontinue utility services to persons who do not pay the charge.

The facts set out in your letter make clear that the \$6 charge is intended to raise revenue, not to cover the expenses of providing utility services. Thus, in imposing the charge, the city is acting in its governmental capacity, not in its proprietary capacity. See Hatten v. City of Houston, 373 S.W.2d 525 (Tex. Civ. App. - Houston 1963, writ ref'd n.r.e.) (explaining that when a municipality furnishes utility services, it acts in its proprietary capacity and is obliged to serve its customers at reasonable and nondiscriminatory rates). Because any charge or fee imposed by a municipality for the purpose of raising revenue is considered a "tax," we must characterize our inquiry as whether the city of Bovina has authority to use the method of taxation you describe. County of Harris v. Shepperd, 291 S.W.2d 721 (Tex. 1956).

Municipalities functioning under the general laws have no inherent power to tax. They possess only those taxing powers that the legislature or the constitution expressly grants them. Vance v. Town of Pleasanton, 261 S.W. 457, 458 (Tex. Civ. App. - San Antonio 1924), holding approved, 277 S.W. 89 (Tex. Comm'n App. 1925, judgment adopted). The basic method of taxation by Texas municipalities is the ad valorem tax. 22 I. Singer, Texas Practice §871 (1976). See V.T.C.S. arts. 1026 and 1027. The Texas Legislature has also authorized general law municipalities to use various other methods of taxation. See, e.g., V.T.C.S. arts. 1028, 1031, 1066c. We find no statutory authority, however, for the method of taxation that you describe in your letter. Thus, the \$6 charge against all home owners

and business owners is not a proper method for raising revenue to support the police department.

In view of our response to your first question, we do not address your second question.

S U M M A R Y

A general law municipality has no authority to raise revenue by charging each home owner and each business owner in Bovina a flat fee.

Very truly yours



J I M M A T T O X  
Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

ROBERT GRAY  
Special Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Sarah Woelk  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Rick Gilpin, Chairman  
Colin Carl  
Susan Garrison  
Tony Guillory  
Jim Moellinger  
Jennifer Riggs  
Nancy Sutton  
Sarah Woelk



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2003

The Honorable Scott Sherwood  
Carson County Attorney  
303 Euclid Avenue  
P.O. Box 947  
Panhandle, Texas 79068-0947

Opinion No. GA-0084

Re: City of Skellytown's authority to enter  
certain agreements with the Skellytown  
Area Volunteer Firefighters-EMS Association  
(RQ-0014-GA)

Dear Mr. Sherwood:

On behalf of the City of Skellytown (the "City"), you submit three questions about the City's authority to adopt a resolution concerning the Skellytown Area Volunteer Firefighters-EMS Association (the "Association"), a nonprofit corporation incorporated on April 3, 2000,<sup>1</sup> and enter into a lease agreement with the Association.

**I. Background**

At a special meeting on May 3, 2000, the Skellytown City Council (the "Council") approved two agreements concerning the City's relationship with the Association:

1. Resolution No. 2000-01, by which the City transferred to the Association "all contracted and dedicated funds, existing [g]overnmental budgets, and [b]ank [a]ccounts previously designated for use by the Skellytown Volunteer Fire-EMS Department." Resolution No. 2000-01, Skellytown City Council (May 3, 2000), attached to Request Brief, *supra* note 1; *see also* Skellytown City Council Special Council Meeting Minutes (May 3, 2000), attached to Request Brief, *supra* note 1.

2. Ratification of Titles, Lease of Facilities and Conveyance of Interest in Realty and Personalty, under which the Council transferred to the Association (a) "[t]he use of titles and all incidences of ownership . . . [for an annual lease payment of \$1.00] for a period of 10 years in the buildings, housing and related facilities located at 412 Main Street," in addition to "the buildings housing existing fire equipment located at 204 Fourth Street . . . , but excluding one bay purchased and

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<sup>1</sup>See Brief accompanying Letter from Honorable Scott Sherwood, Carson County Attorney, to Honorable Greg Abbott, Texas Attorney General, at 1-2 (Jan. 30, 2003) (on file with Opinion Committee) [hereinafter Request Brief].

exclusively reserved by [the City] for its use,” and (b) “[a]ll property, associated equipment, furniture and personalty related to the existing [f]ire-[f]ighting and EMS facilities, including . . . radio equipment and antennae or other communication equipment.” Ratification of Titles, Lease of Facilities, and Conveyance of Interest in Realty and Personalty, §§ I-II, at 1-2, attached to Request Brief, *supra* note 1 [hereinafter Ratification and Lease]. The Ratification and Lease also reserved to the Association “[t]he use of antennae space and the existing water tower and all assigned radio frequencies or other communication spectrums.” *Id.* § III, at 2.

On May 2, 2000, the day prior to the Council meeting, the City mayor, acting on the City’s behalf, and the Association’s fire chief executed an Agency Agreement Between City of Skellytown and the Association,<sup>2</sup> which contained five covenants:

1. The City designated the Association as the City’s agent to provide City inhabitants with “fire protection and other emergency services.”

2. The City retained “the right to supervise and control” the Association’s “duties and activities” performed on the City’s behalf. Additionally, the City designated the fire chief “as its agent for the purpose of day-to-day management and supervision of the Department.”

3. “The agency relationship” established under this agreement “shall continue until either party terminates the agency relationship by sixty . . . days written notice to the other party.”

4. “The real and personal property owned by the Volunteer Fire Department [f]or providing fire protection and other emergency services are being used by and are intended to be used by the [City] for fire protection and other emergency services. Such property is considered to be leased to or borrowed by the [City] for fire protection and other emergency services.”

5. The Association “allow[ed]” the City “to continue to collect the \$1.50 monthly fee attached to the water bills,” which the Association agreed “to accept . . . for insurance and upkeep of the [City-]owned municipal pumper.”<sup>3</sup>

For brevity’s sake, we will refer to all three of these documents collectively as the “Agreements.”

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<sup>2</sup>See Agency Agreement Between City of Skellytown and Skellytown Area Volunteer Firefighters-EMS Ass’n (May 2, 2000), attached to Request Brief, *supra* note 1, at 1-2 [hereinafter Agency Agreement].

<sup>3</sup>See *id.* at 1-2.

## **II. Presumed Validity of City's Actions**

Section 51.003 of the Local Government Code requires us conclusively to presume the validity of the Council's actions that occurred over three years ago in certain circumstances:

(a) A governmental act or proceeding of a municipality is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) an incorporation or attempted incorporation of a municipality . . . ;

(4) an ordinance that, at the time it was passed, was preempted by a statute of this state or the United States . . . ; or

(5) a matter that on the effective date of this section:

(A) is involved in litigation . . . ; or

(B) has been held invalid by a final judgment of a court.

TEX. LOC. GOV'T CODE ANN. § 51.003 (Vernon Supp. 2003). While section 51.003 does not absolutely validate all past municipal actions, it provides "some defense" to an action that, although valid and within a city's authority to enact, was "enacted incorrectly from a procedural or clerical standpoint." HOUSE COMM. ON URBAN AFFAIRS, BILL ANALYSIS, Tex. H.B. 485, 76th Leg., R.S. (1999).

Given that the Council approved the Agreements in question on May 3, 2000—over three years ago—and that no litigation has been filed concerning their validity, the Agreements are valid



unless any of the conditions specified in subsection (b) apply. Under the facts the City has provided, only subsections (b)(1) and (b)(2) must be addressed. Consequently, we examine the issues you raise only to determine whether the Agreements are void *ab initio* or whether the Council's actions in adopting the Agreements constitute a criminal violation.

### III. Dual Officeholding, Incompatibility, and Conflict of Interest

At the time of the May 3, 2000 meeting, one Council member also served as the Association's EMS director and, as such, a member of the Association's board of directors.<sup>4</sup> He held his Council position prior to the Association's incorporation, at which time he was named an "initial" director of the Association.<sup>5</sup> The Council member voted on all of the matters concerning the Association that were before the Council at the meeting. *See* Request Brief, *supra* note 1, at 1-2. Given his dual capacity as a Council member and an Association trustee, the City is concerned about the Agreements' validity.

Accordingly, the City asks first about the "legal consequences of an individual serving simultaneously on the . . . Council and Board of Directors of the Association and voting on" the resolution transferring numerous City assets to the Association. *See* Request Brief, *supra* note 1, at 1. You are particularly concerned about the common-law doctrine of incompatibility, but the constitutional prohibition on dual officeholding and statutory conflict-of-interest restrictions also must be considered. Restrictions that the municipal oath of office, the City charter, or City ordinances may place on dual service or conflict of interest may apply, too, and you should consider whether, under any of these, the Agreements are void *ab initio*; we do not consider these documents here. *See* Tex. Att'y Gen. Op. No. JC-0143 (1999) at 3 ("In deference to city officials, this office does not generally construe city charters or ordinances."); *see, e.g.,* TEX. LOC. GOV'T CODE ANN. § 171.007(b) (Vernon 1999) (stating that Local Government Code chapter 171, which regulates conflicts of interest, "is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interest").

#### A. Dual Officeholding

Article XVI, section 40 of the Texas Constitution, which prohibits a person from simultaneously holding more than one "civil office of emolument," does not apply. TEX. CONST. art. XVI, § 40. Although the Council member serves as both a volunteer emergency medical technician and an Association director, neither of these positions are offices for constitutional purposes. *See* Tex. Att'y Gen. Op. Nos. JC-0385 (2001) at 1-2; JC-0199 (2000) at 1; *cf.* Tex. Att'y Gen. Op. No. DM-303 (1994) at 1 (stating that executive director of nonprofit housing corporation is not an officer for purposes of article XVI, section 40).

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<sup>4</sup>*See* Articles of Incorporation of Skellytown Area Volunteer Firefighters-EMS Ass'n, art. IX, at 5 (Apr. 3, 2000), attached to Request Brief, *supra* note 1.

<sup>5</sup>*Id.* art. IX, at 4 (Apr. 3, 2000); Telephone conversation with James T. Shelton, Skellytown City Attorney (May 21, 2003) (stating that Council member was appointed to office in March 1999).

## B. Incompatibility

The common-law doctrine of incompatibility is “not a single doctrine,” but comprises three aspects: (1) conflicting loyalties; (2) self-appointment; and (3) self-employment. Tex. Att’y Gen. Op. No. JC-0564 (2002) at 1-2; *see also* Tex. Att’y Gen. Op. No. JC-0199 (2000) at 1. Conflicting-loyalties incompatibility applies only to the holding of two public offices. *See Thomas v. Abernathy County Indep. Sch. Dist.*, 290 S.W. 152, 153 (Tex. Comm’n App. 1927, judgm’t adopted); Tex. Att’y Gen. Op. No. GA-0015 (2003) at 1-2. Because a director of a volunteer fire department is not a public officer, conflicting-loyalties incompatibility does not apply here.

Self-appointment and self-employment incompatibility preclude an officer from being appointed to or employed in a position over which the officer has appointment or employment authority. *See Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928). Determining whether either self-appointment or self-employment incompatibility applies to a member or a director of a volunteer fire fighters association traditionally requires an analysis of the municipal charter or the association’s articles of incorporation or bylaws to ascertain the degree of control the municipality has over the association. For example, where a city charter authorizes the fire chief to appoint fire fighters without city approval, a city council member is not precluded from appointment to the fire department. *See* Tex. Att’y Gen. Op. No. JC-0199 (2000) at 1. Similarly, where a municipality does not own, control, or supervise a volunteer fire department, a member is not precluded from serving on the city council. *See* Tex. Att’y Gen. Op. No. JC-0385 (2001) at 2; Tex. Att’y Gen. LO-94-070, at 2. If the facts indicate that an appointment or employment is incompatible with an office already held, the appointment or employment is void. *See* Tex. Att’y Gen. Op. No. JC-0455A (2002) at 2.

The materials you have submitted suggest, but do not demonstrate conclusively, that the City had little control over the Association at the time the Agreements were executed. For example, under the Association’s bylaws, its members elect directors from among themselves; thus, the City has no role in appointing the fire chief, assistant fire chief, fire captains, and ambulance director.<sup>6</sup> Nonetheless, the Agency Agreement reserves to the City “the right to supervise and control the duties and activities of the Volunteer Fire Department performed on” the City’s behalf.<sup>7</sup>

Even if the City retained sufficient control over the Association so that the Council member’s dual positions are incompatible, however, the Agreements are not void. *See* TEX. LOC. GOV’T CODE ANN. § 51.003(b)(1) (Vernon Supp. 2003). The effect of any incompatibility is to void the Council member’s acceptance of a position on the Association’s board of directors. *See* Tex. Att’y Gen. Op. No. JC-0455A (2002) at 2. Accordingly, his votes as a member of the Council were valid.<sup>8</sup>

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<sup>6</sup>*See* By-Laws of Skellytown Area Volunteer Firefighters-EMS Ass’n, art. III, §§ 3.01-3.04, at 2, attached to Request Brief, *supra* note 1.

<sup>7</sup>Agency Agreement, *supra* note 2, at 1 (covenant 2).

<sup>8</sup>Section 21.002 of the Local Government Code, which became effective May 3, 2001, does not apply to this city council meeting, which occurred a year to the day before section 21.002’s effective date. *See* Act of Apr. 20, 2001, (continued...)

### C. Conflict of Interest

Although the Council member's position on the City Council on May 3, 2000 is not in doubt, he was required to comply with any applicable conflict-of-interest provision set forth in chapter 171 of the Local Government Code. *See* TEX. LOC. GOV'T CODE ANN. § 171.001(1) (Vernon 1999) (defining the term "local public official"). *See generally id.* ch. 171 (Vernon 1999) ("Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments").<sup>9</sup>

Section 171.004 generally prohibits a local official, including a city council member, from participating in a matter involving a business entity, including a nonprofit corporation, in which the official has a substantial interest if the matter will "have a special economic effect on the business entity that is distinguishable from the effect on the public." *Id.* § 171.004(a)(1); *see id.* § 171.001(2) (defining the term "business entity"); *see also* Tex. Att'y Gen. Op. No. DM-303 (1994) at 3 (concluding that a nonprofit corporation is a business entity for chapter 171's purposes). An official has a substantial interest in a business entity if, in the previous year, he or she received more than ten percent of his or her gross income from the business entity. *See* TEX. LOC. GOV'T CODE ANN. § 171.002(a)(2) (Vernon 1999). A local official who has such a substantial interest must "file . . . an affidavit stating the nature and extent of the interest and . . . abstain from" participating further in the matter. *Id.* § 171.004(a). *But see id.* § 171.004(c) (excepting an official from the abstention requirement if a majority of the governmental body's members are likewise required to file affidavits on the same issue). Given that the Ratification and Lease required the City to lease certain buildings

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<sup>8</sup>(...continued)

77th Leg., R.S., ch. 42, § 3, 2001 Tex. Gen. Laws 73, 73; Tex. Att'y Gen. Op. No. JC-0564 (2002) at 3; Skellytown City Council Special Council Meeting Minutes (May 3, 2000), attached to Request Brief, *supra* note 1. Section 21.002 expressly authorizes a member of a municipal governing body to volunteer in certain organizations only if the governing body officially permits the service:

A member of the governing body of a municipality may serve as a volunteer for an organization that protects the health, safety, or welfare of the municipality regardless of whether the organization is funded or supported in whole or part by the municipality if the governing body adopts a resolution allowing members of the governing body to perform service of that nature.

TEX. LOC. GOV'T CODE ANN. § 21.002 (Vernon Supp. 2003). Section 21.002 preempts the common-law incompatibility doctrine "with regard to that aspect of self-employment involving dual service on city councils and volunteer fire departments. . . . [D]ual service in those specific instances is necessarily prohibited *unless* a city council adopts the kind of resolution" section 21.002 describes. Tex. Att'y Gen. Op. No. JC-0564 (2002) at 4. Currently, therefore, neither the Council member being discussed here nor any other Council member currently may serve as "a volunteer for an organization that protects the health, safety, or welfare of the municipality," TEX. LOC. GOV'T CODE ANN. § 21.002 (Vernon Supp. 2003), unless the City has adopted a resolution under section 21.002, but no such resolution was necessary on May 3, 2000.

<sup>9</sup>The Association's bylaws regulate conflicts of interest, but the conflict-of-interest provision pertains solely to a financial transaction between the Association and an Association director, officer, or member. *See* By-Laws of Skellytown Area Volunteer Firefighters-EMS Ass'n, art. VII, § 7.05, at 7, attached to Request Brief, *supra* note 1. It does not apply here.

to the Association for an annual lease payment of \$1 and authorized the City to collect a fee with utility payments to give to the Association, the Council's actions on May 3, 2000 may be found to have a "special economic effect" on the Association for purposes of section 171.004. *Id.* § 171.004(a)(1); *see also* Tex. Att'y Gen. Op. No. DM-279 (1993) at 7 (stating that this office ordinarily does not decide whether a particular action will have a special economic effect on a particular entity).

An uncompensated director of a nonprofit corporation does not have a substantial interest in the corporation for purposes of section 171.004 and is, therefore, not required to comply with section 171.004's affidavit and abstention requirements. *See* Tex. Att'y Gen. Op. No. GA-0068 (2003) at 3-4. Section 171.009 expressly permits a local public official to serve as an uncompensated director of a private nonprofit corporation: "It shall be lawful for a local public official to serve as member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity." TEX. LOC. GOV'T CODE ANN. § 171.009 (Vernon 1999). Thus, a city council may engage in transactions with a nonprofit corporation even if a council member also serves as an uncompensated director of the nonprofit corporation. *See* Tex. Att'y Gen. Op. No. GA-0068 (2003) at 2-3. Under the Association's bylaws, a member of the Association's board of directors receives no salary for serving on the Association's board.<sup>10</sup>

Section 171.009 does not apply to a council member who is compensated for his or her services to the corporation, however, either as a director or as a member. It is not clear whether, at the time of the Council meeting, the Council member received compensation from the Association for his services as an Association member.<sup>11</sup> Some municipalities compensate their volunteer fire fighters. The legislature has noted, for example, that "many city charters allow for a modest level of compensation for volunteer fire fighters." HOUSE COMM. ON URBAN AFFAIRS, BILL ANALYSIS, Tex. S.B. 738, 77th Leg., R.S. (2001) at 1; *see* Tex. Att'y Gen. Op. No. JC-0199 (2000) at 2 (stating that a Gilmer volunteer fire fighter "is compensated at the rate of \$4.00 per fire and \$4.00 per drill, and receives an annual contribution from the city to the Fire Fighters Relief and Retirement Fund"). If the Council member, in fact, received more than ten percent of his gross income in 1999 from the fire department for his services as a member, section 171.004 obligated him to file an affidavit describing his interest prior to the May 3, 2000 meeting and to decline participation in the discussion and vote on the matters specially affecting the Association. *See* TEX. LOC. GOV'T CODE ANN. § 171.004(a) (Vernon 1999). Failure to have done so may have rendered the Agreements voidable under chapter 171, *see id.* §§ 171.003, 171.006, but the Agreements are not void *ab initio* in any case under chapter 171. Accordingly, the Agreements are conclusively presumed valid under section 51.003 of the Local Government Code. *See id.* § 51.003(a), (b)(1) (Vernon Supp. 2003).

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<sup>10</sup>*See id.* art. VI, § 6.09, at 6.

<sup>11</sup>*See* Letter from James T. Shelton, Skellytown City Attorney, to Kim Oltrogge, Office of the Attorney General at 1 (May 5, 2003) (on file with Opinion Committee) [hereinafter Shelton Letter of May 5, 2003] (indicating that Mr. Shelton would inform the office when he received compensation information)

#### **IV. Lease and Conveyance of City Property to the Association**

The City asks second about the legality of the Ratification and Lease, which served to convey to the Association (1) buildings, housing, related facilities, and (2) “[a]ll property, associated equipment, furniture, and personalty” related to the facilities. *See* Request Brief, *supra* note 1, at 2; Ratification and Lease, *supra* page 2, art. II, at 1. Under the Ratification and Lease, the buildings and related facilities are leased to the Association for a period of ten years for \$1 per year, while title to the personal property is “relinquished and . . . conveyed.” Ratification and Lease, *supra* page 2, art. II, at 1. Citing article III, section 52 of the Texas Constitution and Attorney General Opinion JC-0439, the City avers that the conveyances are legal because they “serve[] a public purpose of the City and . . . [are] subject to adequate controls to ensure that the public purpose is accomplished during the term of” the agreement between the City and the Association. Request Brief, *supra* note 1, at 2; *see also* Agency Agreement, *supra* note 2.

Attorney General Opinion JC-0439, which the City cites, analyzes a county’s authority to transfer county funds to six different nonprofit organizations under article III, section 52. *See* Tex. Att’y Gen. Op. No. JC-0439 (2001) at 2. To ascertain whether a grant to a particular nonprofit organization serves legitimate county purposes, that opinion first considered specific statutes that authorized counties to take on certain responsibilities. *See id.* at 5-7; *see also* TEX. FAM. CODE ANN. §§ 264.006, 264.402, 264.403 (Vernon 2002); Tex. Att’y Gen. Op. No. JC-0582 (2002) at 2 (declining to address whether a lease agreement between a county and a museum is valid under article III, section 52 if the county “lacked an affirmative grant of express or implied authority to enter into the lease agreement”).

The analysis Attorney General Opinion JC-0439 uses applies by analogy to a general-law municipality. Both a county and a general-law municipality have authority to exercise only those powers expressly granted to them or necessarily implied.<sup>12</sup> Thus, the City’s authority to transfer property to the Association must be found in, or necessarily implied from, a statute.

Section 51.015(a) of the Local Government Code provides the requisite authority for both the lease of buildings and related facilities and the conveyance of personal property and equipment. Under section 51.015, a Type A general-law municipality may “lease, grant, or convey property located in or outside the municipality.” TEX. LOC. GOV’T CODE ANN. § 51.015(a) (Vernon 1999). Given this statutory authority, we next consider the transaction’s constitutionality.

Article III, section 52 of the Texas Constitution withholds from the legislature all power to authorize a municipality “to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation.” TEX. CONST. art. III, § 52(a). The Texas Supreme Court

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<sup>12</sup>*See also id.* (stating that the City is a Type A general-law city). *Compare Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993) (stating that article V, section 18 of the Texas Constitution permits a commissioners court to exercise broad discretion to conduct county business, although “the legal basis for any action taken must be grounded ultimately in the constitution or statutes”), with *City of Socorro v. U.S. Fireworks of Am.*, 842 S.W.2d 779, 780 n.1 (Tex. App.—El Paso 1992, writ denied) (stating that a general-law municipality’s powers are “limited to those specifically granted by the legislature as enumerated in the relevant statutes”).

has interpreted this provision to prohibit legislation requiring “*gratuitous* payments to individuals, associations, or corporations.” *Tex. Mun. League Intergov’tl Risk Pool v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 383 (Tex. 2002). But, as the court has pointed out, “[a] political subdivision’s paying public money is not ‘gratuitous’ if the political subdivision receives return consideration.” *Id.* The court will uphold the constitutionality of legislation requiring payments to individuals, corporations, or associations if the statute “(1) serves a legitimate public purpose; and (2) affords a clear public benefit received in return.” *Id.* The court uses a “three-part test” to determine “if a statute accomplishes a public purpose consistent with section 52(a)”:

Specifically, the Legislature must: (1) ensure that the statute’s predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure that the political subdivision receives a [sufficient] return benefit.

*Id.*; see *id.* at 384 (stating that a public subdivision must receive “sufficient—not equal—return consideration” to render payment of public funds constitutional under article III, section 52). “This office has identified similar principles for determining if a particular expenditure serves a public purpose.” Tex. Att’y Gen. Op. No. GA-0078 (2003) at 4. Thus, the governing body of a general-law municipality “‘will avoid violating article III, section 52 if it (i) determines in good faith that the expenditure serves a public purpose and (ii) places sufficient controls on the transaction, contractual or otherwise, to ensure that the public purpose is carried out.’” *Id.* at 4-5 (quoting Tex. Att’y Gen. Op. No. JC-0582 (2002) at 6). A transaction that violates article III, section 52 is void *ab initio*. See Tex. Att’y Gen. LO-90-99, at 2.

Provided that the lease and conveyance satisfy the three-part test under article III, section 52 of the constitution, the City was authorized to lease and convey its property in this situation. See TEX. CONST. art. III, § 52; TEX. LOC. GOV’T CODE ANN. § 51.034 (Vernon 1999); *Tex. Mun. League Intergov’tl Risk Pool*, 74 S.W.3d at 384.

The City suggests, in relation to the second question, that if the Agency Agreement is void due to the Council member’s dual service, the transfer of City property may therefore be invalid. Request Brief, *supra* note 1, at 1-2. Because the Agency Agreement is not affected by the dual service, we need not answer this question.

#### **V. Collecting a Mandatory Fee in Water Bills to Pay for Volunteer Fire Fighting Services**

We understand that the City has, for many years, “included a mandatory fee in the water bills to help pay for volunteer fire fighting services. In May[] 2000, the mandatory fee included in the monthly water bill was \$1.50 per bill. The Agency Agreement between the City and the Association provides that the City may continue to collect the mandatory fees” for the Association’s use. *Id.* at 2. Accordingly, the City asks whether it may “include a mandatory fee in the water bills to pay for volunteer fire fighting services.” *Id.*

In November 2002, the City obtained an opinion from the Texas Municipal League, which suggests that the City lacks authority to impose such a fee.<sup>13</sup> Citing a 1985 attorney general opinion, JM-338, and a 1924 decision of the Texas Court of Civil Appeals, the Municipal League reasoned that the City did not have the necessary statutory authority to collect a tax to pay for volunteer fire services:

Any fee attached to a utility bill by a general law city, which is not used to cover the expenses of providing the utility service for which customers are being billed, is a tax. General law cities, however, possess only those taxing powers that the legislature or the constitution expressly grants them. I am aware of no statutory authority for such a tax used to pay for volunteer fire services. The Texas Attorney General has similarly concluded that a general law city may not attach a monthly fee on utility bills to finance the police department.

TML Letter of Nov. 4, 2002, *supra* note 13, at 1 (citations omitted); *see Vance v. Town of Pleasanton*, 261 S.W. 457, 458 (Tex. Civ. App.—San Antonio 1924, writ granted), *aff'd*, 277 S.W. 89 (Tex. Comm'n App. 1925, judgment adopted); Tex. Att'y Gen. Op. No. JM-338 (1985) at 1-2.

Attorney General Opinion JM-338 determined that a \$6 charge, which a general-law city assessed against all home and business owners in the city, for financing the city's police department is an unlawful tax. *See* Tex. Att'y Gen. Op. No. JM-338 (1985) at 1-2. The charge appeared "on monthly utility bills," but because it was intended for the police department's use, it had no connection to the costs of providing utility services. *Id.* at 1. Accordingly, the charge was "intended to raise revenue" and was a tax. *Id.* Because a general-law municipality had no "statutory authority . . . for [this] method of taxation," the opinion concluded that the \$6 charge was "not a proper method for raising revenue to support the police department." *Id.* at 1-2.

A Type A general-law municipality has the prerequisite specific statutory authority to levy certain taxes. *See also* TEX. CONST. art. XI, § 4 (permitting a general-law municipality to "levy, assess and collect such taxes as may be authorized by law"). For example, a municipality in which a fire control, prevention, and emergency medical services district is established must impose an additional sales and use tax "in the area of the district" to finance the district's operation. TEX. TAX CODE ANN. § 321.106(a) (Vernon 2002). A general-law municipality has no statutory authority to levy a tax for fire protection services by adding a tax to each utility user's bill, however.

Consequently, the City may not levy the tax in this manner, and the provision in the Agency Agreement allowing the City "to continue to collect the \$1.50 monthly fee attached to the water bills"<sup>14</sup> is void.

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<sup>13</sup>Letter from Bennett Sandlin, Assistant General Counsel, Texas Municipal League, to Honorable Lucille Lawrence, Mayor of Skellytown, at 1 (Nov. 4, 2002) [hereinafter TML Letter of Nov. 4, 2002], attached to Shelton Letter of May 5, 2003, *supra* note 11.

<sup>14</sup>*See* Agency Agreement, *supra* note 2, at 2 (covenant 5).


S U M M A R Y

Because the City of Skellytown executed various agreements (the "Agreements") with the Skellytown Area Volunteer Firefighters-EMS Association (the "Association") over three years ago and no lawsuits to invalidate them have been filed, the Agreements are "conclusively presumed" to be valid unless, among other things, the Agreements were void *ab initio*. See TEX. LOC. GOV'T CODE ANN. § 51.003 (Vernon Supp. 2003). The fact that a city council member was, at the time the City approved the Agreements, also a director of the Association does not affect the Agreements' validity.

The City had statutory authority to convey to the Association personal property, such as equipment and furniture, and to lease City buildings and facilities to the Association. A conveyance or lease complies with article III, section 52 of the Texas Constitution if (1) it primarily accomplishes a public purpose; (2) the City retains sufficient control to ensure that the public purpose would be accomplished; and (3) the City receives a sufficient return benefit.

A Type A general-law municipality has no statutory authority to attach a \$1.50 charge to water bills to fund the costs of volunteer fire fighting services.

Very truly yours,

  
GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

DON R. WILLETT  
Deputy Attorney General for Legal Counsel

NANCY S. FULLER  
Chair, Opinion Committee

Kymerly K. Oltrogge  
Assistant Attorney General, Opinion Committee



## ATTACHMENT 2

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**Fwd: Street Maintenance Fee**

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**From :** Manager <managercos@somervilletx.gov>      Fri, Dec 14, 2018 09:22 AM  
**Subject :** Fwd: Street Maintenance Fee  
**To :** Manager <managercos@somervilletx.gov>

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**From:** "bbw" <bbw@cityattorneytexas.com>  
**To:** "csecretary" <csecretarycos@somervilletx.gov>  
**Cc:** "Paige Seanz" <Paige@cityattorneytexas.com>  
**Sent:** Thursday, December 13, 2018 5:41:06 PM  
**Subject:** RE: Street Maintenance Fee

Rose

As to the Street Maintenance Fee, that is not allowed to simply be added to the bills. That is classified as a tax and general law cities do not have the power to tax in that manner. That needs to be removed and if desired (which I understand it's not) placed on the bills solely as an optional donation.

*Barbara Boulware-Wells, Principal, Partner*

**The Knight Law Firm, LLP**

**Attorneys at Law** Executive Office Terrace

223 West Anderson Lane, Suite A-105

Austin, Texas 78752

512.323.5778 Office

512.771.7171 Cell

512.323.5773 Fax

1.800.603.0967 Toll free

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**NEW BUSINESS**

**ITEM # C**

# AGENDA MEMORANDUM

**MEMO TO:**

Honorable Mayor and City Council Members

**FROM:**

Kerry Lacy, Interim City Manager

**DATE:**

December 14, 2018

**SUBJECT:**

Proposed Ordinance No. 18-012 Amending Ordinance No. 05-007-A

**INFORMATION:**

Over the past several days I have been discussing with the Mayor and the City Secretary the idea of developing a more structured and orderly methodology of preparing the Council agendas and to provide for proper conduct and decorum in Council meetings. After reviewing the existing Ordinance No. 05-007-A, it is my opinion that it is in need of revision. Over the past several years, I have developed rules and procedures for several municipalities that have dealt with meeting decorum and preparation of agendas and had sent my suggestions to the City Attorney so that a proposed amending Ordinance could be prepared for your consideration.

**ACTION RECOMMENDED:**

Consider approval of Ordinance No. 18-012 as prepared and submitted by the City Attorney for the City of Somerville.

**ATTACHMENTS:**

- 1) Proposed Ordinance No. 18-012

## ATTACHMENT 1

**ORDINANCE NO. 18-012**

**AN ORDINANCE OF THE CITY OF SOMERVILLE, TEXAS, AMENDING  
ORDINANCE NO. 05-007-A PROVIDING RULES FOR CITIZEN  
COMMUNICATION DURING CITY COUNCIL MEETINGS; PROVIDING  
RULES FOR PLACING ITEMS ON AGENDA AND APPEAL THEREOF;  
AMENDING AND REPEALING ALL CONFLICTING ORDINANCES;  
AND PROVIDING FOR OTHER RELATED MATTERS.**

**WHEREAS**, Ordinance No. 05-007-A noted that in order to accomplish of the business of the City of Somerville, Texas (the "City") that City Council meetings be conducted in an orderly and timely manner; and

**WHEREAS**, persons attending and participating in City Council Meetings should conduct themselves in a manner not to unreasonably delay, impede, interrupt or disrupt the conduct of the City Council Meetings, the business of the City, or the opportunity and right of other participants to participate and be heard;

**WHEREAS**, presentations, comments and statements that are unduly lengthy or repetitious, that are not related to the agenda item then before the Council, or that are a citizen communication that is not related to a business or a community issue over which the City Council has or may assert jurisdiction, can unreasonably delay and interfere with the conduct of the meetings and the ability of all to participate;

**WHEREAS**, reasonable rules, regulations and procedures will assist and encourage public participation, aide the City Council in conducting and completing its meetings in an orderly manner, and enable more citizens to participate, while permitting the business of the City to be accomplished in a reasoned and orderly fashion;

**WHEREAS**, it is reasonable to provide rules and procedures for the City Council itself in providing items for upcoming agendas, who may add or delete items requested to be on agendas and coordination of such agenda and its preparation; and

**WHEREAS**, the City Council wishes to modify the Rules for Citizen Communication as well as provide Rules for Agenda Preparation and Appeals.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOMERVILLE, TEXAS, THAT:**

**Section 1. Findings Of Fact.** The findings and recitations set out herein are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Amendment of Section 3.** Section 3, Time Limitations, of Ordinance No. 05-007-A is

hereby amended as follows:

\*\*\*\*\*

**SECTION 3. SIGN UP AND TIME LIMITATIONS.** As set out below, Citizens who wish to speak shall be required to sign up for either Citizen Comments or Comments for Specific Agenda Items. Except as waived, or otherwise authorized by a vote of the City Council the following time limitations shall apply to citizen comments:

- (a) **COMMENTS UNDER CITIZEN COMMENTS.** Prior to the start of the meeting, Citizens wishing to speak to the City Council about items NOT on the Agenda must sign up to speak under the item "Citizens Comments" and shall note on their Comment card the topic or item that they wish to address to the City Council. Upon being recognized by the Mayor, the Citizen shall have five (5) minutes to address the City Council. No citizen shall have more than five (5) minutes unless approved by majority vote of the Council. Citizens may also provide any additional written information to the Council before, during or after the City Council Meeting.
- (b) **CITIZENS. COMMENTS ON SPECIFIC AGENDA ITEM.** Prior to the start of the meeting, Citizens wishing to speak to the City Council about an item ON the Agenda must sign up to speak and note on their Comment card the Agenda Item they wish to address to the City Council. Upon being recognized by the Mayor, the Citizen shall have five (5) minutes to address the Council regarding the subject of an agenda item then being considered by the City Council. Citizens may also provide any additional written information to the Council before, during or after the City Council Meeting.

\*\*\*\*\*

**Section 3. Additional Amendment to Provide for City Council Rules.** Ordinance No. 05-007-A is hereby amended to add as Section 6 Policies and Procedures for City Council members requesting items to be on the Agenda as well as who may add to or delete such items from the agenda and the coordination of such agenda and its preparation, as follows:

\*\*\*\*\*

**SECTION 6. POLICIES AND PROCEDURES FOR CITY COUNCIL MEMBERS AND AGENDAS.** As set out below, the governing body of the City desires to provide guidance to the members of such governing body, the City Administrator and the City Secretary as to how items shall be placed and handled for the Agenda.

(a) **MEETING AGENDA, NOTICE AND PREPARATION**

(1) The following persons are authorized to request that a matter (or item) be placed on an agenda of an upcoming meeting:

- (a) The Mayor

- (b) A City Council Member
- (c) The City Administrator

(2) A member of the City staff shall provide the City Administrator with any information about an item that needs to be addressed, and request that the item be placed on the agenda. In cases where the City staff has made a request, the City Administrator shall be responsible for determining whether the requested item is placed upon the agenda, and the City Administrator shall direct the City Secretary, in writing, accordingly.

(3) A member of the public desiring to have an item placed on the agenda may request, in writing, to the Mayor or a City Council Member for such consideration and the Mayor or City Council Member may, at their discretion, elect to have such item placed on an upcoming agenda as a “New Business” item.

(4) All items that are to be placed on the City Council’s agenda shall be submitted in writing, to the City Secretary and include the following:

- (a) Details concerning the topic to be discussed.
- (b) Supporting documentation
- (c) Direction as to the type of action proposed to be considered or taken by the City Council on the matter (e.g., public hearing, evaluation, consideration, review, discussion and/or possible action).

(5) The City Secretary shall coordinate agenda requests with the City Administrator and staff, in a timely manner, to ensure that necessary information is available on requested matters and to provide for sufficient time in preparing the agenda. Any written request which has been approved for placing on the upcoming agenda shall be submitted, in final form, to the City Secretary no later than 12:00 noon on Tuesday immediately preceding the City Council meeting date, upon which the item will be placed. This lead time is necessary in order for the City Secretary to properly prepare the agenda document and adequately post the meeting notice in compliance with State law.

(6) In the event of an emergency, an urgent need and or a previously unforeseen circumstance, as determined by the Mayor or the City Administrator, an item may be submitted in final form after the above noted deadline, but within the timeframes required by State law for notice posting.

#### **(b) AGENDA REVIEW AND FINALIZATION**

(1) The Mayor is the presiding officer over all meetings of the City Council. Accordingly, the City Secretary and/or the City Administrator shall provide the Mayor with a copy of the draft of each upcoming agenda, in writing, before the close of business at 5:00 P.M. on Wednesday prior to the next City Council meeting, so that the Mayor may review the draft/proposed agenda and request revisions to it, as the Mayor deems appropriate for the orderly operation and progress of the meeting and City business.



(2) If the Mayor determines that it is necessary to delay and/or remove any requested item from the proposed agenda, to ensure efficient and productive functioning of City business, the Mayor will notify the item requestor of this circumstance and will coordinate any necessary future posting of the item or items of issue.

(3) The Mayor will coordinate the final format of the upcoming City Council meeting agenda with the City Secretary on or before noon on Thursday, immediately prior to the upcoming City Council meeting, so that the City Secretary may timely post the final agenda, as per State law and finalize, prepare and distribute meeting packets to all City Council Members, City Administrator, City Attorney and others as determined by the Mayor or City Administrator, for their use, review and preparation for the upcoming City Council meeting.

**(c) APPEAL OF DECISION TO REMOVE AN AGENDA ITEM**

(1) If a City Councilmember desires that an item be placed on an agenda and the Mayor determines, after consultation between the Councilmember and the Mayor, that in his/her opinion, the matter should not be brought before the City Council, then such Councilmember has the right to appeal to the entire governing body for a decision as to whether the matter should be placed before the City Council.

(2) To exercise this right of appeal, the appellant Councilmember shall bring the issue to the City Council's attention on an upcoming agenda as "an appeal of the Mayor's decision regarding a future agenda item."

(3) The appellant Councilmember shall request that the City Secretary post his appeal, which shall contain two parts: 1) the appeal of the agenda topic desired to be placed on the agenda, so that the appeal may be properly raised and acted upon by the City Council during the meeting and 2) the actual item/topic. The members of the City Council will initially vote solely on the issue of whether the matter should be brought before City Council, and an affirmative vote of a simple majority shall result in the City Council being eligible to take up for discussion and possible action that actual item as posted on the agenda.

\*\*\*\*\*

**Section 4. Amendment of Conflicting Ordinances.** All parts of ordinances in conflict herewith are hereby amended to the extent of such conflict only. To the extent of a conflict between this Ordinance and another ordinance of the City, this Ordinance shall control.

**Section 5. Effective Date.** This Ordinance shall take effect immediately upon adoption.

**Section 6. Open Meetings.** It is hereby officially found and determined that the meeting at

which this Ordinance was passed was open to the public as required, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**PASSED AND APPROVED** on this 18<sup>th</sup> day of December, 2018.

ATTEST:

**CITY OF SOMERVILLE, TEXAS**

\_\_\_\_\_  
Rose Rosser, City Secretary

\_\_\_\_\_  
Waylon Edwards, Mayor